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6 **UNITED STATES DISTRICT COURT**

7 **DISTRICT OF NEVADA**

8 RICHARD BELL et al., )

9 Plaintiffs, )

10 vs. )

11 RECONTRUST CO., N.A. et al., )

12 Defendants. )

3:10-cv-00444-RCJ-WGC

13 **ORDER**

14 This case arises out of the foreclosure of Plaintiffs' and putative class members'  
15 mortgages. The Court previously dismissed all claims, with leave to amend to plead a  
16 promissory estoppel claim. The Fourth Amended Complaint ("4AC") lists five named Plaintiffs  
17 with grievances concerning four properties (the "Properties"). (*See* Fourth Am. Compl. ¶¶ 1–4,  
18 Jan. 4, 2012, ECF No. 59). Plaintiffs first recount their mortgages. (*See id.* ¶¶ 10–13). Plaintiffs  
19 allege that with respect to each of them, "Defendant Bank of America told Plaintiffs to stop  
20 making the payments on the mortgage in order to be considered for a modification." (*Id.* ¶ 20).  
21 "[Bank of America had no intention of modifying the loans . . . [T]he true intention of Bank of  
22 America was to foreclose . . . the moment [Plaintiffs defaulted]." (*Id.* ¶ 23). "Bank of America  
23 continued to have the Plaintiffs communicate with its representatives and continue to believe that  
24 a modification of the loans was possible." (*Id.* ¶ 24). "[Meanwhile,] Bank of America was  
25 recording . . . notices of default . . . ." (*Id.* ¶ 25).

1 Defendants have asked the Court to dismiss the 4AC for failure to state a promissory  
2 estoppel claim because there is no clear promise alleged, the claim is not pled with particularity,  
3 and the claim is barred by the statute of frauds.

4 To establish promissory estoppel four elements must exist: (1) the party to be  
5 estopped must be apprised of the true facts; (2) he must intend that his conduct shall  
6 be acted upon, or must so act that the party asserting estoppel has the right to believe  
7 it was so intended; (3) the party asserting the estoppel must be ignorant of the true  
8 state of facts; (4) he must have relied to his detriment on the conduct of the party to  
9 be estopped.

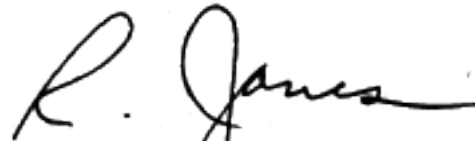
10 *Pink v. Busch*, 691 P.2d 456, 459 (Nev. 1984) (quoting *Chequer, Inc. v. Painters & Decorators*  
11 *Joint Comm., Inc.*, 655 P.2d 996, 998–99 (Nev. 1982)). Plaintiffs have not sufficiently pled  
12 promissory estoppel. Promissory estoppel need not be pled with particularity under Rule 9(b),  
13 but Plaintiffs must plead an actual promise. At oral argument, it became clear that Plaintiffs did  
14 not allege an actual promise to modify in any particular way, or even generally, but only that  
15 Defendants informed Plaintiffs that they could not obtain a modification unless they were in  
16 default.

### 17 CONCLUSION

18 IT IS HEREBY ORDERED that the Motion to Dismiss (ECF No. 67) is GRANTED  
19 without prejudice.

20 IT IS SO ORDERED.

21 Dated this 30th day of July, 2012.



22 ROBERT C. JONES  
23 United States District Judge  
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